

AMENDED IN ASSEMBLY MAY 31, 2016

AMENDED IN ASSEMBLY APRIL 13, 2016

AMENDED IN ASSEMBLY MARCH 15, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1978**

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**Introduced by Assembly Member Gonzalez**  
**(Coauthors: Assembly Members Chu, Lopez, McCarty, Rodriguez,**  
**Santiago, Thurmond, and Weber)**

February 16, 2016

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An act to *amend Section 12940 of the Government Code, and to amend Section 1106 of, and to add Part 4.2 (commencing with Section 1420) to Division 2 of the Labor Code, relating to employment.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1978, as amended, Gonzalez. Employment: property service workers.

Existing law establishes the Department of Industrial Relations in the Labor and Workforce Development Agency to foster, promote, and develop the welfare of the wage earners of California, to improve their working conditions, and to advance their opportunities for profitable employment. Existing law establishes within the department the Division of Labor Standards Enforcement, which is vested with the general duty of enforcing labor laws, including those relating to wage claims and employer retaliation. Existing law requires the Labor Commissioner, defined as the Chief of the Division of Labor Standards Enforcement, to establish and maintain a field enforcement unit in order to ensure that minimum labor standards are met.

The California Occupational Safety and Health Act of 1973 establishes certain safety and other responsibilities of employers and employees, including a requirement that every employer establish, implement, and maintain an effective injury prevention program. The act requires the program to be written, except as specified, and to include certain elements.

This bill would establish specific standards and protections for property service workers, to be known as the Property Service Workers Protection Act, and define terms for its purposes.

The bill would require the ~~department~~, *Labor Commissioner*, no later than July 1, ~~2017~~, *2018*, to develop worker and supervisor materials for a prescribed 4-hour training regarding sexual ~~harassment, sexual violence, and human trafficking~~ *violence and sexual harassment* and to make those materials available to employers, covered workers, and the public through, among other means, posting on its Internet Web site. The bill would require the ~~department by that date to establish requirements for commissioner, beginning July 1, 2019, to update these materials annually. The bill would, on and after July 1, 2018, require employers who provide janitorial services to have a system to require that covered workers and supervisors, at least annually, receive prescribed in-person training on workplace sexual violence and sexual harassment and sexual assault. The bill would require the department commissioner to establish standards and requirements for trainers and recordkeeping relating to training. The bill would require the department by that date to establish a toll-free hotline for reporting of complaints and incidents of workplace sexual harassment, sexual violence, and human trafficking and require workplace notice to employees of existing rights in this area. Labor Commissioner to develop minimum qualifications for trainers who provide the training.~~

The bill would require the Occupational Safety and Health Standards Board, by ~~July 1, 2017~~, *January 1, 2018*, to adopt standards developed by the Division of Occupational Safety and ~~Health~~ *Health*, in consultation with a specified advisory group, that require an employer to adopt a workplace sexual violence and sexual harassment prevention plan as a part of its injury and illness prevention plan, to protect covered workers from *workplace* sexual violence and *sexual* harassment.

The bill would require the registration of employers conducting janitorial business, as prescribed, and establish specific authority for the ~~Director of Industrial Relations~~ *Labor Commissioner* to enforce and implement that requirement. The bill would set application and renewal

fees. The bill would prohibit an employer, on or after January 1, 2018, from conducting any janitorial business without a valid registration. The bill would require an employer to include specific information in the registration application, subscribed and sworn to under penalty of perjury, thereby imposing a state-mandated local program by expanding the scope of the crime of perjury. The bill would prohibit the granting of registration under specific circumstances, authorize the director to ~~revoke, deny, suspend, or place a registration on probation, as prescribed, and would void a registration in certain circumstances.~~ The bill would require the ~~director~~ *commissioner*, on and after ~~February~~ *July* 1, 2018, to maintain on the ~~department's~~ *commissioner's* Internet Web site a regularly updated, searchable database of registered employers, and, on and after July 1, ~~2018, 2019,~~ a searchable database regarding the compliance and enforcement activities of the department.

The bill would establish various compliance and enforcement provisions, including a requirement that the director establish a Property Services Compliance Unit to enforce the act. The bill would establish civil fines and provide for labor compliance agreements, stop order authority, audits, and investigations. The bill would impose a state-mandated local program by making it a crime to conduct any janitorial business without a valid registration, or to fail to observe a stop order. ~~The bill would establish specific protections against discrimination and retaliation for engaging in conduct delineated in the bill, including civil and criminal penalties and a right to take civil action.~~

The bill would require the deposit of registration fees and specific civil fines in the State Janitorial Contractor Registration Fund, which the bill would create, and make the moneys in the fund available, upon appropriation, for the reasonable costs of administering the registration of janitorial contractors and the costs and obligations associated with the administration and enforcement of the bill by the ~~department.~~ *commissioner*. The bill, to provide adequate cash flow for those purposes, would authorize the Director of Finance, with the concurrence of the Secretary of the Labor and Workforce Development Agency, to approve a short-term loan each fiscal year from the Labor and Workforce Development Fund to the State Janitorial Contractor Registration Fund.

~~The bill would require the department, before July 1, 2017, to develop certain standards and procedures regarding violations of the bill.~~

*The bill would make conforming changes regarding the definition of an employer.*

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 12940 of the Government Code is  
2     amended to read:

3     12940. It is an unlawful employment practice, unless based  
4     upon a bona fide occupational qualification, or, except where based  
5     upon applicable security regulations established by the United  
6     States or the State of California:

7     (a) For an employer, because of the race, religious creed, color,  
8     national origin, ancestry, physical disability, mental disability,  
9     medical condition, genetic information, marital status, sex, gender,  
10    gender identity, gender expression, age, sexual orientation, or  
11    military and veteran status of any person, to refuse to hire or  
12    employ the person or to refuse to select the person for a training  
13    program leading to employment, or to bar or to discharge the  
14    person from employment or from a training program leading to  
15    employment, or to discriminate against the person in compensation  
16    or in terms, conditions, or privileges of employment.

17    (1) This part does not prohibit an employer from refusing to  
18    hire or discharging an employee with a physical or mental  
19    disability, or subject an employer to any legal liability resulting  
20    from the refusal to employ or the discharge of an employee with  
21    a physical or mental disability, where the employee, because of  
22    his or her physical or mental disability, is unable to perform his  
23    or her essential duties even with reasonable accommodations, or  
24    cannot perform those duties in a manner that would not endanger  
25    his or her health or safety or the health or safety of others even  
26    with reasonable accommodations.

27    (2) This part does not prohibit an employer from refusing to  
28    hire or discharging an employee who, because of the employee's  
29    medical condition, is unable to perform his or her essential duties  
30    even with reasonable accommodations, or cannot perform those

1 duties in a manner that would not endanger the employee's health  
2 or safety or the health or safety of others even with reasonable  
3 accommodations. Nothing in this part shall subject an employer  
4 to any legal liability resulting from the refusal to employ or the  
5 discharge of an employee who, because of the employee's medical  
6 condition, is unable to perform his or her essential duties, or cannot  
7 perform those duties in a manner that would not endanger the  
8 employee's health or safety or the health or safety of others even  
9 with reasonable accommodations.

10 (3) Nothing in this part relating to discrimination on account of  
11 marital status shall do either of the following:

12 (A) Affect the right of an employer to reasonably regulate, for  
13 reasons of supervision, safety, security, or morale, the working of  
14 spouses in the same department, division, or facility, consistent  
15 with the rules and regulations adopted by the commission.

16 (B) Prohibit bona fide health plans from providing additional  
17 or greater benefits to employees with dependents than to those  
18 employees without or with fewer dependents.

19 (4) Nothing in this part relating to discrimination on account of  
20 sex shall affect the right of an employer to use veteran status as a  
21 factor in employee selection or to give special consideration to  
22 Vietnam-era veterans.

23 (5) (A) This part does not prohibit an employer from refusing  
24 to employ an individual because of his or her age if the law  
25 compels or provides for that refusal. Promotions within the existing  
26 staff, hiring or promotion on the basis of experience and training,  
27 rehiring on the basis of seniority and prior service with the  
28 employer, or hiring under an established recruiting program from  
29 high schools, colleges, universities, or trade schools do not, in and  
30 of themselves, constitute unlawful employment practices.

31 (B) The provisions of this part relating to discrimination on the  
32 basis of age do not prohibit an employer from providing health  
33 benefits or health care reimbursement plans to retired persons that  
34 are altered, reduced, or eliminated when the person becomes  
35 eligible for Medicare health benefits. This subparagraph applies  
36 to all retiree health benefit plans and contractual provisions or  
37 practices concerning retiree health benefits and health care  
38 reimbursement plans in effect on or after January 1, 2011.

39 (b) For a labor organization, because of the race, religious creed,  
40 color, national origin, ancestry, physical disability, mental

1 disability, medical condition, genetic information, marital status,  
2 sex, gender, gender identity, gender expression, age, sexual  
3 orientation, or military and veteran status of any person, to exclude,  
4 expel, or restrict from its membership the person, or to provide  
5 only second-class or segregated membership or to discriminate  
6 against any person because of the race, religious creed, color,  
7 national origin, ancestry, physical disability, mental disability,  
8 medical condition, genetic information, marital status, sex, gender,  
9 gender identity, gender expression, age, sexual orientation, or  
10 military and veteran status of the person in the election of officers  
11 of the labor organization or in the selection of the labor  
12 organization's staff or to discriminate in any way against any of  
13 its members or against any employer or against any person  
14 employed by an employer.

15 (c) For any person to discriminate against any person in the  
16 selection, termination, training, or other terms or treatment of that  
17 person in any apprenticeship training program, any other training  
18 program leading to employment, an unpaid internship, or another  
19 limited duration program to provide unpaid work experience for  
20 that person because of the race, religious creed, color, national  
21 origin, ancestry, physical disability, mental disability, medical  
22 condition, genetic information, marital status, sex, gender, gender  
23 identity, gender expression, age, sexual orientation, or military  
24 and veteran status of the person discriminated against.

25 (d) For any employer or employment agency to print or circulate  
26 or cause to be printed or circulated any publication, or to make  
27 any nonjob-related inquiry of an employee or applicant, either  
28 verbal or through use of an application form, that expresses,  
29 directly or indirectly, any limitation, specification, or discrimination  
30 as to race, religious creed, color, national origin, ancestry, physical  
31 disability, mental disability, medical condition, genetic information,  
32 marital status, sex, gender, gender identity, gender expression,  
33 age, sexual orientation, or military and veteran status, or any intent  
34 to make any such limitation, specification, or discrimination. This  
35 part does not prohibit an employer or employment agency from  
36 inquiring into the age of an applicant, or from specifying age  
37 limitations, where the law compels or provides for that action.

38 (e) (1) Except as provided in paragraph (2) or (3), for any  
39 employer or employment agency to require any medical or  
40 psychological examination of an applicant, to make any medical

1 or psychological inquiry of an applicant, to make any inquiry  
2 whether an applicant has a mental disability or physical disability  
3 or medical condition, or to make any inquiry regarding the nature  
4 or severity of a physical disability, mental disability, or medical  
5 condition.

6 (2) Notwithstanding paragraph (1), an employer or employment  
7 agency may inquire into the ability of an applicant to perform  
8 job-related functions and may respond to an applicant's request  
9 for reasonable accommodation.

10 (3) Notwithstanding paragraph (1), an employer or employment  
11 agency may require a medical or psychological examination or  
12 make a medical or psychological inquiry of a job applicant after  
13 an employment offer has been made but prior to the  
14 commencement of employment duties, provided that the  
15 examination or inquiry is job related and consistent with business  
16 necessity and that all entering employees in the same job  
17 classification are subject to the same examination or inquiry.

18 (f) (1) Except as provided in paragraph (2), for any employer  
19 or employment agency to require any medical or psychological  
20 examination of an employee, to make any medical or psychological  
21 inquiry of an employee, to make any inquiry whether an employee  
22 has a mental disability, physical disability, or medical condition,  
23 or to make any inquiry regarding the nature or severity of a physical  
24 disability, mental disability, or medical condition.

25 (2) Notwithstanding paragraph (1), an employer or employment  
26 agency may require any examinations or inquiries that it can show  
27 to be job related and consistent with business necessity. An  
28 employer or employment agency may conduct voluntary medical  
29 examinations, including voluntary medical histories, which are  
30 part of an employee health program available to employees at that  
31 worksite.

32 (g) For any employer, labor organization, or employment agency  
33 to harass, discharge, expel, or otherwise discriminate against any  
34 person because the person has made a report pursuant to Section  
35 11161.8 of the Penal Code that prohibits retaliation against hospital  
36 employees who report suspected patient abuse by health facilities  
37 or community care facilities.

38 (h) For any employer, labor organization, employment agency,  
39 or person to discharge, expel, or otherwise discriminate against  
40 any person because the person has opposed any practices forbidden

1 under this part or because the person has filed a complaint, testified,  
2 or assisted in any proceeding under this part.

3 (i) For any person to aid, abet, incite, compel, or coerce the  
4 doing of any of the acts forbidden under this part, or to attempt to  
5 do so.

6 (j) (1) For an employer, labor organization, employment agency,  
7 apprenticeship training program or any training program leading  
8 to employment, or any other person, because of race, religious  
9 creed, color, national origin, ancestry, physical disability, mental  
10 disability, medical condition, genetic information, marital status,  
11 sex, gender, gender identity, gender expression, age, sexual  
12 orientation, or military and veteran status, to harass an employee,  
13 an applicant, an unpaid intern or volunteer, or a person providing  
14 services pursuant to a contract. Harassment of an employee, an  
15 applicant, an unpaid intern or volunteer, or a person providing  
16 services pursuant to a contract by an employee, other than an agent  
17 or supervisor, shall be unlawful if the entity, or its agents or  
18 supervisors, knows or should have known of this conduct and fails  
19 to take immediate and appropriate corrective action. An employer  
20 may also be responsible for the acts of nonemployees, with respect  
21 to sexual harassment of employees, applicants, unpaid interns or  
22 volunteers, or persons providing services pursuant to a contract in  
23 the workplace, where the employer, or its agents or supervisors,  
24 knows or should have known of the conduct and fails to take  
25 immediate and appropriate corrective action. In reviewing cases  
26 involving the acts of nonemployees, the extent of the employer's  
27 control and any other legal responsibility that the employer may  
28 have with respect to the conduct of those nonemployees shall be  
29 considered. An entity shall take all reasonable steps to prevent  
30 harassment from occurring. Loss of tangible job benefits shall not  
31 be necessary in order to establish harassment.

32 (2) The provisions of this subdivision are declaratory of existing  
33 law, except for the new duties imposed on employers with regard  
34 to harassment.

35 (3) An employee of an entity subject to this subdivision is  
36 personally liable for any harassment prohibited by this section that  
37 is perpetrated by the employee, regardless of whether the employer  
38 or covered entity knows or should have known of the conduct and  
39 fails to take immediate and appropriate corrective action.



(4) (A) For purposes of this subdivision only, “employer” means any person regularly employing one or more persons or regularly receiving the services of one or more persons providing services pursuant to a contract, or any person acting as an agent of an employer, directly or indirectly, the state, or any political or civil subdivision of the state, and cities. The definition of “employer” in subdivision (d) of Section 12926 applies to all provisions of this section other than this subdivision.

(B) Notwithstanding subparagraph (A), for purposes of this subdivision, “employer” does not include a religious association or corporation not organized for private profit, except as provided in Section 12926.2.

(C) For purposes of this subdivision, “harassment” because of sex includes sexual harassment, gender harassment, and harassment based on pregnancy, childbirth, or related medical conditions. Sexually harassing conduct need not be motivated by sexual desire.

(D) *For purposes of this subdivision, on and after July 1, 2018:*

(i) *Any person or entity that contracts with a janitorial employer as defined by subdivision (d) of Section 1421 of the Labor Code who lacks a current and valid registration under Part 4.2 (commencing with Section 1420) of Division 2 of the Labor Code on the date the person or entity enters into or renews a contract or subcontract for janitorial services with the janitorial employer, is an “employer” as defined by paragraph (4).*

(ii) *Any person or entity that contracts with a janitorial employer, as defined by subdivision (d) of Section 1421 of the Labor Code, who has a current and valid registration under Part 4.2 (commencing with Section 1420) of Division 2 of the Labor Code on the date the person or entity enters into or renews a contract or subcontract for janitorial services with the janitorial employer, is presumed not to be an “employer” as defined by paragraph (4) of the persons providing services pursuant to the contract or subcontract for janitorial services.*

(5) For purposes of this subdivision, “a person providing services pursuant to a contract” means a person who meets all of the following criteria:

(A) The person has the right to control the performance of the contract for services and discretion as to the manner of performance.

1 (B) The person is customarily engaged in an independently  
2 established business.

3 (C) The person has control over the time and place the work is  
4 performed, supplies the tools and instruments used in the work,  
5 and performs work that requires a particular skill not ordinarily  
6 used in the course of the employer's work.

7 (k) For an employer, labor organization, employment agency,  
8 apprenticeship training program, or any training program leading  
9 to employment, to fail to take all reasonable steps necessary to  
10 prevent discrimination and harassment from occurring.

11 (l) (1) For an employer or other entity covered by this part to  
12 refuse to hire or employ a person or to refuse to select a person  
13 for a training program leading to employment or to bar or to  
14 discharge a person from employment or from a training program  
15 leading to employment, or to discriminate against a person in  
16 compensation or in terms, conditions, or privileges of employment  
17 because of a conflict between the person's religious belief or  
18 observance and any employment requirement, unless the employer  
19 or other entity covered by this part demonstrates that it has explored  
20 any available reasonable alternative means of accommodating the  
21 religious belief or observance, including the possibilities of  
22 excusing the person from those duties that conflict with his or her  
23 religious belief or observance or permitting those duties to be  
24 performed at another time or by another person, but is unable to  
25 reasonably accommodate the religious belief or observance without  
26 undue hardship, as defined in subdivision (u) of Section 12926,  
27 on the conduct of the business of the employer or other entity  
28 covered by this part. Religious belief or observance, as used in  
29 this section, includes, but is not limited to, observance of a Sabbath  
30 or other religious holy day or days, reasonable time necessary for  
31 travel prior and subsequent to a religious observance, and religious  
32 dress practice and religious grooming practice as described in  
33 subdivision (q) of Section 12926. This subdivision shall also apply  
34 to an apprenticeship training program, an unpaid internship, and  
35 any other program to provide unpaid experience for a person in  
36 the workplace or industry.

37 (2) An accommodation of an individual's religious dress practice  
38 or religious grooming practice is not reasonable if the  
39 accommodation requires segregation of the individual from other  
40 employees or the public.

1 (3) An accommodation is not required under this subdivision  
2 if it would result in a violation of this part or any other law  
3 prohibiting discrimination or protecting civil rights, including  
4 subdivision (b) of Section 51 of the Civil Code and Section 11135  
5 of this code.

6 (4) For an employer or other entity covered by this part to, in  
7 addition to the employee protections provided pursuant to  
8 subdivision (h), retaliate or otherwise discriminate against a person  
9 for requesting accommodation under this subdivision, regardless  
10 of whether the request was granted.

11 (m) (1) For an employer or other entity covered by this part to  
12 fail to make reasonable accommodation for the known physical  
13 or mental disability of an applicant or employee. Nothing in this  
14 subdivision or in paragraph (1) or (2) of subdivision (a) shall be  
15 construed to require an accommodation that is demonstrated by  
16 the employer or other covered entity to produce undue hardship,  
17 as defined in subdivision (u) of Section 12926, to its operation.

18 (2) For an employer or other entity covered by this part to, in  
19 addition to the employee protections provided pursuant to  
20 subdivision (h), retaliate or otherwise discriminate against a person  
21 for requesting accommodation under this subdivision, regardless  
22 of whether the request was granted.

23 (n) For an employer or other entity covered by this part to fail  
24 to engage in a timely, good faith, interactive process with the  
25 employee or applicant to determine effective reasonable  
26 accommodations, if any, in response to a request for reasonable  
27 accommodation by an employee or applicant with a known physical  
28 or mental disability or known medical condition.

29 (o) For an employer or other entity covered by this part, to  
30 subject, directly or indirectly, any employee, applicant, or other  
31 person to a test for the presence of a genetic characteristic.

32 (p) Nothing in this section shall be interpreted as preventing the  
33 ability of employers to identify members of the military or veterans  
34 for purposes of awarding a veteran's preference as permitted by  
35 law.

36 *SEC. 2. Section 1106 of the Labor Code is amended to read:*

37 1106. For purposes of Sections 1102.5, 1102.6, 1102.7, 1102.8,  
38 1104, and 1105, "employee" includes, but is not limited to, any  
39 individual employed by the state or any subdivision thereof, any  
40 county, city, city and county, including any charter city or county,

1 and any school district, community college district, municipal or  
2 public corporation, political subdivision, or the University of  
3 ~~California~~. *California, or any covered worker as defined in*  
4 *subdivision (a) of Section 1421.*

5 ~~SECTION 1.~~

6 SEC. 3. Part 4.2 (commencing with Section 1420) is added to  
7 Division 2 of the Labor Code, to read:

8  
9 PART 4.2. PROPERTY SERVICE WORKERS PROTECTION  
10 ACT

11  
12 CHAPTER 1. GENERAL

13  
14 1420. (a) The Legislature finds and declares that in the  
15 janitorial industry in this state:

16 (1) Workers are widely victimized by wage theft, ~~sexual~~  
17 ~~harassment and assault~~, *workplace sexual violence and harassment*,  
18 failure to provide workers' compensation insurance, and other  
19 ~~"low-road"~~ *illegal practices perpetrated by unscrupulous employers*  
20 *contractors* that fail to comply with existing labor standards laws.

21 (2) *Workers in janitorial occupations often work alone at night,*  
22 *making them vulnerable to sexual violence and harassment while*  
23 *on the job, a condition that is exacerbated by low pay, low job*  
24 *mobility, and inadequate training. Adopting standards to protect*  
25 *workers from sexual violence and sexual harassment must be an*  
26 *obligation of all involved in the janitorial industry.*

27 ~~(2) Contractors~~

28 (3) *Contractors, including subcontractors and franchisors, are*  
29 *often undercapitalized, change names, and abuse their corporate*  
30 *identity; making it difficult for victimized workers to secure*  
31 *meaningful legal relief.*

32 ~~(3)~~

33 (4) While some ~~"high-road"~~ *employers contractors* comply with  
34 labor standards laws and invest in training and retaining a more  
35 skilled workforce, these ~~employers~~ *contractors* are undercut by  
36 ~~low-road~~ *unscrupulous competitors* in a continual race to the  
37 bottom.

38 ~~(4)~~

39 (5) It is in the public interest that ~~employers~~ *contractors* compete  
40 primarily on the basis of quality, efficiency, and innovation, and

1 not through a race to the bottom that perpetuates substandard  
2 working conditions and lack of compliance with labor standards  
3 laws.

4 ~~(5)~~

5 (6) Despite the state's *many* efforts over the years to bring  
6 underground economy practices in the janitorial industry under  
7 control, these practices persist.

8 ~~(6)~~

9 (7) Absent additional regulation of labor standards by the state  
10 to prevent the undercutting of ~~high-road employers, law-abiding~~  
11 ~~contractors~~, the current situation is unlikely to change.

12 ~~(7) Workers in janitorial occupations often work alone at night,~~  
13 ~~making them vulnerable to sexual violence and harassment while~~  
14 ~~on the job, a condition that is exacerbated by low pay, low job~~  
15 ~~mobility, and poor training. Adopting standards to protect workers~~  
16 ~~from sexual violence and sexual harassment should be an obligation~~  
17 ~~of all janitorial industry employers.~~

18 (b) It is the intent of the Legislature in enacting this part to:

19 ~~(1) Direct the department to develop worker and supervisor~~  
20 ~~education materials regarding sexual harassment and sexual~~  
21 ~~violence that are tailored to the janitorial industry in the languages~~  
22 ~~and literacy levels appropriate to the janitorial workforce, and to~~  
23 ~~establish requirements for the frequency of that training for~~  
24 ~~supervisors and workers, and standards for trainers who are to~~  
25 ~~deliver training; janitorial contractors to post a notice regarding~~  
26 ~~workplace sexual violence and harassment and to establish a~~  
27 ~~system to require all janitorial workers and supervisors to at least~~  
28 ~~annually receive comprehensive in-person training regarding~~  
29 ~~workplace sexual violence and harassment tailored to the janitorial~~  
30 ~~industry. It is also the intent of the Legislature, in enacting this~~  
31 ~~part, to direct the Labor Commissioner, in consultation with labor~~  
32 ~~organizations that represent janitors and with nonprofits that~~  
33 ~~advocate for policies and standards to prevent workplace sexual~~  
34 ~~violence and harassment in the janitorial industry, to develop the~~  
35 ~~notice and the worker and supervisor education materials for these~~  
36 ~~trainings in the languages and literacy levels that are appropriate~~  
37 ~~for the janitorial workforce, and to establish standards for the~~  
38 ~~trainers who are to deliver these trainings.~~

39 (2) Direct the Occupational Safety and Health Standards Board  
40 to require janitorial industry ~~employers~~ *contractors* to include the

1 ~~training~~ training, indicated in paragraph (1) above, as part of their  
2 injury and illness prevention plans.

3 (3) Establish a system of janitorial contractor registration to  
4 encourage labor standards compliance and to establish prompt and  
5 effective sanctions for violating this ~~part~~. *act*.

6 1421. This part shall be known, and may be cited, as the  
7 Property Service Workers Protection Act.

8 1422. For purposes of this part:

9 (a) ~~“Covered laws” means Chapter 10 (commencing with~~  
10 ~~Section 690.020) of Division 1 of Title 9 of Part 2 of the Code of~~  
11 ~~Civil Procedure, Article 1 (commencing with Section 12940) of~~  
12 ~~Chapter 6 of Part 2.8 of Division 3 of Title 2 of the Government~~  
13 ~~Code, and the Labor Code, including, but not limited to, Sections~~  
14 ~~96.8, 98, 238 to 238.5, inclusive, 558.1, and 2810, and Chapter~~  
15 ~~4.5 (commencing with Section 1060) of Part 3.~~

16 (b)

17 (a) (1) “Covered worker” means a janitor, including any  
18 individual *predominantly* working, whether as an employee,  
19 independent contractor, or a franchisee, as a janitor, as that term  
20 is defined in the federal Service Contract Act Directory of  
21 Occupations. ~~If an individual’s work duties are predominantly~~  
22 ~~those of a janitor as defined therein, that person shall be deemed~~  
23 ~~a janitor for purposes of this part.~~

24 (2) “Covered workers” *does not include any individual whose*  
25 *work duties are predominantly final cleanup of debris, grounds,*  
26 *and buildings near the completion of a construction, alteration,*  
27 *demolition, installation, or repair work project, including, but not*  
28 *limited to, street cleaners.*

29 (b) “Current and valid registration” *means an active*  
30 *registration pursuant to Chapter 3 (commencing with Section*  
31 *1430) that is not void or suspended.*

32 (c) “Director” *means the Director of the Department of*  
33 *Industrial Relations.*

34 (d) “Department” *means the Department of Industrial Relations.*

35 (e)

36 (e) (1) “Employer” means any person or entity that employs at  
37 least one employee and one or more covered workers and that  
38 enters into contracts, subcontracts, or franchise arrangements to  
39 provide janitorial services. The term “employer” includes the term  
40 “covered successor employer.”

(2) “Covered successor employer” means an employer who meets one or more of the following criteria:

(A) Uses substantially the same facilities, equipment, supervisors, and workforce to offer substantially the same services to substantially the same clients as a predecessor employer. An employer—~~that~~ *who* has operated with a *current and* valid registration for at least the preceding three years shall not be considered a covered successor employer for using substantially the same facilities, equipment, supervisors, and workforce to substantially the same clients, if all of the following apply:

(i) The individuals in the workforce were not referred or supplied for employment by the predecessor employer to the successor employer.

(ii) The successor employer has not had any interest in, or connection with, the operation, ownership, management, or control of the business of the predecessor employer within the preceding three years.

~~(iii) The successor employer has not been determined to have violated any of the covered laws.~~

(B) Shares in the ownership, management, control of the workforce, or interrelations of business operations with the predecessor employer.

(C) Is an immediate family member of any owner, partner, officer, licensee, or director of the predecessor employer or of any person who had a financial interest in the predecessor employer. “Immediate family member” means a spouse, parent, sibling, son, daughter, uncle, aunt, niece, nephew, grandparent, *grandson*, *granddaughter*, mother-in-law, father-in-law, brother-in-law, sister-in-law, or cousin.

(f) “*Labor Commissioner*” means the Labor Commissioner of the Division of Labor Standards Enforcement of the Department.

~~(d)~~

(g) “State Janitorial Contractor Registration Fund” or “fund” means the State Janitorial Contractor Registration Fund established in Chapter 5 (commencing with Section 1445).

~~(e)~~

(h) “Standards board” means the Occupational Safety and Health Standards Board.

~~(f)~~

(i) “Supervisor” means any individual having the authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline workers, or the responsibility to direct them, or to adjust their grievances, or effectively to recommend that action, if, in connection with the foregoing, the exercise of that authority is not of a merely routine or clerical nature, but requires the use of independent judgment. *has the same meaning as in subdivision (t) of Section 12926 of the Government Code.*

CHAPTER 2. PROTECTIONS AGAINST WORKPLACE SEXUAL  
VIOLENCE AND HARASSMENT

1425. (a) ~~The department, Labor Commissioner, no later than July 1, 2017, January 1, 2018, shall do all of the following:~~ *following in consultation and partnership with an advisory group that meets the requirements of Section 1427:*

(1) Develop worker and supervisor agendas, handouts, ~~facilitation~~ *trainer* guides, and other materials for a four-hour training regarding sexual harassment, sexual violence, and human trafficking *violence and sexual harassment* that are appropriate for the janitorial industry and the languages and literacy levels of covered workers.

(A) Training materials shall include information related to: definitions of workplace sexual harassment, sexual assault, and human trafficking; *violence and sexual harassment*; employers’ legal obligations to prevent workplace sexual harassment and assault; *violence and sexual harassment*; potential legal and disciplinary consequences for employers and perpetrators of workplace sexual harassment and assault; *violence and sexual harassment*; community, mental health, and legal resources locally available for survivors of those who have experienced workplace sexual harassment or assault; *violence and sexual harassment*; legal protections available to immigrant workers subjected to workplace sexual harassment or sexual assault; *violence and sexual harassment*, including, but not limited to, the federal U nonimmigrant status known as U-visa, and protections for victims of human trafficking; *visa*; prevention, protection, and reporting strategies for workplace sexual harassment, sexual assault, or human trafficking; *violence and sexual harassment*; information



on filing administrative complaints with the appropriate state and federal agencies; antiretaliation and other legal protections for those who have experienced *workplace sexual harassment and sexual assault; violence and sexual harassment*; information regarding the Injury and Illness Protection Program of the Division of Occupational Safety and Health, *and on the employer's workplace sexual violence and sexual harassment prevention plan, as described in Section 1426*, and other topics as the ~~director~~ Labor Commissioner deems necessary for janitorial workers and supervisors.

(B) The ~~department~~ Labor Commissioner shall provide these materials in all languages that are the language spoken at home of at least ~~500~~ 2,000 janitors (ACS Occupation Code 4220) who reside in this state, as determined by the most recent American Community Survey of the United States Census Bureau.

(C) The ~~department~~ *Beginning July 1, 2019, the Labor Commissioner* shall update these materials on or before July 1 of each year and make them available to employers, covered workers, and the public through, among other means, posting on its Internet Web site.

~~(2) Establish requirements that employers shall require all covered workers and supervisors to, at least annually, receive comprehensive, accurate and appropriate in-person training lasting at least four hours regarding sexual harassment and sexual assault that provides an opportunity for interactive questions and answers. These mandatory trainings shall use the worker and supervisor training materials in paragraph (1) of subdivision (a) and shall be delivered in the primary language spoken by at least 25 percent of the employer's covered workers. Employers shall provide these in-person trainings at no cost to all covered workers and to all supervisors of covered workers on at least an annual basis and within 30 days of hire. Employers shall pay employees and supervisors at their regular rate of pay for participating in these trainings or, if required by law, at their overtime rate of pay.~~

~~(3)~~  
(2) Establish minimum qualification standards for trainers who may deliver training, including but not limited to, a minimum of five years of experience conducting adult education with the demographics of the janitorial workforce. The collective bargaining

1 agent that represents the employer's covered workers or the  
2 designee of the collective bargaining agent may deliver trainings.

3 ~~(4) Establish requirements for employers to maintain accurate~~  
4 ~~records documenting the delivery of training by qualified trainers~~  
5 ~~which includes: sign-in sheets with the participants' and qualified~~  
6 ~~trainer's signatures; a listing of the names, addresses, and telephone~~  
7 ~~numbers of the participants and of the qualified trainers; and a~~  
8 ~~copy of the materials provided and used in the training.~~

9 ~~(5) Establish a toll-free hotline for the reporting of complaints~~  
10 ~~and incidents of workplace sexual harassment, sexual assault, and~~  
11 ~~human trafficking to the Division of Occupational Safety and~~  
12 ~~Health, the Department of Fair Employment and Housing, and to~~  
13 ~~the National Human Trafficking Resource Center. The hotline~~  
14 ~~shall provide service in all the languages that meet the requirements~~  
15 ~~of subparagraph (B) of paragraph (1).~~

16 ~~(6) Require employers to post and display prominently a notice,~~  
17 ~~of a size, form, and content as the director prescribes, in a~~  
18 ~~conspicuous place where it may be read by covered workers during~~  
19 ~~work hours, and in all places where notices to covered workers~~  
20 ~~are posted both physically and electronically. The notice shall~~  
21 ~~inform covered workers of their rights under the sexual harassment~~  
22 ~~and human trafficking laws, contain examples of illegal employer~~  
23 ~~conduct, provide the hotline number in paragraph (5) and provide~~  
24 ~~the contact information for local resources to assist those who have~~  
25 ~~experienced sexual harassment and human trafficking. Where a~~  
26 ~~significant portion of the employer's workforce of covered workers~~  
27 ~~is not proficient in English, the employer shall provide the notice~~  
28 ~~in the language the covered workers speak. The department shall~~  
29 ~~develop an approved notice in all languages that meet the~~  
30 ~~requirements of subparagraph (B) of paragraph (1) and make that~~  
31 ~~notice available on its Internet Web site.~~

32 ~~(7) Appoint an advisory group of stakeholders to assist the~~  
33 ~~department in carrying out its responsibilities under this~~  
34 ~~subdivision. The advisory group shall include representatives from~~  
35 ~~a nonprofit organization that advocates for standards to protect~~  
36 ~~workers in the janitorial industry from workplace sexual harassment~~  
37 ~~and assault and from a labor organization that represents covered~~  
38 ~~workers.~~

39 ~~(8) Adopt regulations as the department determines to be~~  
40 ~~necessary to carry out this subdivision.~~

1     ~~(b)~~

2     (3) *Develop the size, form, and content of a notice to be posted*  
3 *by employers consistent with the requirements of paragraph (3)*  
4 *of subdivision (b), below, that shall inform covered workers of*  
5 *their rights under the anti-sexual harassment laws, contain*  
6 *examples of illegal employer conduct, and provide the telephone*  
7 *numbers for nonprofit, nongovernmental organizations able to*  
8 *provide help, referral services, training, and general information*  
9 *to those who have experienced workplace sexual violence and*  
10 *harassment or labor trafficking. The Labor Commissioner shall*  
11 *develop an approved notice that has been translated into the*  
12 *languages specified in subparagraph (B) of paragraph (1) of*  
13 *subdivision (a) and shall make the notice available on its Internet*  
14 *Web site.*

15     (b) *On and after July 1, 2018, all employers shall:*

16     (1) *Have a system to require all covered workers and*  
17 *supervisors to, at least annually, receive comprehensive, accurate*  
18 *and appropriate in-person training lasting at least four hours*  
19 *regarding workplace sexual violence and sexual harassment that*  
20 *provides an opportunity for interactive questions and answers.*  
21 *These mandatory trainings shall use the worker and supervisor*  
22 *materials in paragraph (1) of subdivision (a) and shall be delivered*  
23 *in English and in all primary languages spoken at home by at least*  
24 *25 percent of the employer's covered workers in the State of*  
25 *California. Employers shall provide these in-person trainings at*  
26 *no cost to all covered workers and to all supervisors of covered*  
27 *workers on at least an annual basis and within 60 days of hire.*  
28 *Employers shall pay employees and supervisors at their regular*  
29 *rate of pay for participating in these trainings or, if the training*  
30 *causes an employee or supervisor to work overtime hours, at his*  
31 *or her overtime rate of pay.*

32     (2) *Maintain accurate records for a minimum of three years*  
33 *documenting the delivery of training by qualified trainers which*  
34 *includes: certificates of completion for participants, sign-in sheets*  
35 *with the participants' and qualified trainer's signatures; a listing*  
36 *of the names, addresses, and telephone numbers of the participants*  
37 *and of the qualified trainers, and a copy of the materials provided*  
38 *and used in the training.*

39     (3) *Post and display prominently a notice that complies with*  
40 *the requirements of paragraph (3) of subdivision (a) in all*

1 *languages that have been made available by the Labor*  
2 *Commissioner. The notice shall be posted in a conspicuous place*  
3 *where the notice may be read by covered workers during work*  
4 *hours, and in all places where notices to covered workers are*  
5 *posted both physically and electronically.*

6 *(c) The Labor Commissioner shall have broad authority to*  
7 *enforce and implement the provisions of this chapter and may*  
8 *establish through regulation any procedures necessary to carry*  
9 *out such provisions.*

10 1426. (a) The standards board, by no later than ~~July 1, 2017,~~  
11 *January 1, 2018, shall adopt standards developed by the Division*  
12 *of Occupational Safety and ~~Health~~ Health, in consultation and*  
13 *partnership with an advisory group that meets the requirements*  
14 *of Section 1427, that require an employer to adopt a workplace*  
15 *sexual violence and sexual harassment prevention plan, as a part*  
16 *of its injury and illness prevention plan, to protect covered workers*  
17 *from workplace sexual violence and harassment.*

18 ~~(e)~~

19 (b) The standards adopted pursuant to subdivision ~~(b)~~ (a) shall  
20 include all of the following:

21 (1) A requirement that the workplace sexual violence and sexual  
22 harassment prevention plan shall be *in effect at all times and* in  
23 written form for all employers.

24 (2) A requirement that the workplace sexual violence and sexual  
25 harassment prevention plan include specific means for janitors  
26 who work during the nighttime or early morning hours to work in  
27 pairs, or to have an equivalent form of protection.

28 (3) A requirement that the workplace sexual violence and sexual  
29 harassment prevention plan include specific protections for janitors  
30 ~~against covered workers against workplace sexual violence and~~  
31 ~~sexual harassment from clients, coworkers, and outsiders.~~  
32 *supervisors, building tenants, visitors, and intruders.*

33 (4) A system to, at least annually, assess and improve upon  
34 *factors that may contribute to, or help prevent workplace sexual*  
35 *violence and sexual harassment.*

36 ~~(4)~~

37 (5) A requirement that all workplace sexual violence and sexual  
38 harassment prevention ~~plans~~ *plans, and the annual assessment of*  
39 *those plans, be developed in—~~conjunction~~ consultation and*

1 *partnership* with covered workers, including their recognized  
2 collective bargaining agents, if any.

3 ~~(5)~~

4 (6) A requirement that all workplace sexual violence and sexual  
5 harassment prevention plans include ~~the training of all covered~~  
6 ~~workers and supervisors of covered workers consistent with~~  
7 ~~subdivision (a): training, notice, and recordkeeping requirements~~  
8 *consistent with the requirements of Section 1425.*

9 ~~(6)~~

10 (7) A requirement that employers maintain records of complaints  
11 and incidents of workplace sexual violence and sexual harassment,  
12 *harassment for a minimum period of three years*, including the  
13 date, number of employees involved, nature of the claim or  
14 incident, worksite location, investigation ~~steps~~ *steps*, and results  
15 of the employer's investigation.

16 ~~(7)~~

17 (8) A requirement that employers screen supervisors for  
18 convictions of any of the acts listed in subdivision (c) of Section  
19 290 of the Penal Code, for being listed on the registered sex  
20 offender database under the Sex Offender Registration Act (Chapter  
21 5.5 (commencing with Section 290) of Title 9 of Part 1 of the Penal  
22 Code), and for any civil judgments for having committed sexual  
23 harassment.

24 ~~(8) A requirement for the reporting of complaints and incidents~~  
25 ~~of workplace sexual violence and sexual harassment to appropriate~~  
26 ~~agencies including, but not limited to, the Department of Fair~~  
27 ~~Employment and Housing, the Division of Occupational Safety~~  
28 ~~and Health, and the National Human Trafficking Resource Center.~~

29 (9) *A requirement that employers notify covered workers, who*  
30 *have complained of an incident of workplace sexual violence or*  
31 *harassment, of how to report such an incident to an appropriate*  
32 *government agency or to law enforcement as well as of any*  
33 *resources available to covered workers for coping with such an*  
34 *incident, including, but not limited to, employee assistance*  
35 *programs.*

36 ~~(d)~~

37 (c) This section does not limit the authority of the standards  
38 board to adopt standards to protect employees from workplace  
39 violence or harassment. Nothing in this section shall be interpreted  
40 to preclude the standards board from adopting standards that

1 require other employers to adopt plans to protect employees from  
2 workplace violence or harassment. Nothing in this section shall  
3 be interpreted to preclude the standards board from adopting  
4 standards that require an employer subject to this section, or any  
5 other employer, to adopt a workplace violence or harassment  
6 prevention plan that includes elements or requirements additional  
7 to, or broader in scope than, those described in this section.

8 *1427. The Labor Commissioner and the Division of*  
9 *Occupational Safety and Health shall each appoint an advisory*  
10 *group of stakeholders to assist them in carrying out their respective*  
11 *responsibilities under this chapter. The advisory group shall*  
12 *include representatives from at least one nonprofit organization*  
13 *that advocates for policies and standards to prevent workplace*  
14 *sexual violence and harassment in the janitorial industry, and from*  
15 *a labor organization that represents covered workers. The term*  
16 *“nonprofit organization” means a nonprofit entity exempt from*  
17 *taxation pursuant to Section 501(c)(3) of the Internal Revenue*  
18 *Code (26 U.S.C. Sec. 501(c)(3)) or pursuant to Section 501(c)(5)*  
19 *of the Internal Revenue Code (26 U.S.C. Sec. 501(c)(5)), or a*  
20 *nonprofit corporation.*

### 21 22 CHAPTER 3. REGISTRATION OF JANITORIAL CONTRACTORS 23

24 1430. (a) ~~The director~~ *Labor Commissioner* shall have broad  
25 authority to ~~enforce~~ *interpret, enforce, and implement* this part.  
26 This authority includes, but is not limited to:

27 (1) Maintaining the janitorial contractor registry, list, and  
28 Internet Web site.

29 ~~(2) Negotiating, monitoring and enforcing labor compliance~~  
30 ~~agreements.~~

31 ~~(3)~~

32 (2) Conducting random and nonrandom audits or investigations  
33 of complaints, or both audits and investigations.

34 ~~(4)~~

35 ~~(3) Issuing, renewing, denying renewal of, suspending, revoking,~~  
36 ~~or placing on probation suspending and voiding an employer’s~~  
37 ~~registration and certificate of registration.~~

38 ~~(5)~~

39 (4) Issuing civil fines and stop orders.

40 ~~(6)~~

1 (5) Other powers as determined by the ~~director~~ *Labor*  
2 *Commissioner* that are necessary to interpret, implement, and  
3 enforce ~~this chapter~~. *Chapter 4 (commencing with Section 1440).*

4 (b) The ~~director~~ *Labor Commissioner* may establish through  
5 the adoption of regulations any procedures it determines to be  
6 necessary to carry out ~~this part~~. *the provisions of this chapter and*  
7 *of Chapter 4 (commencing with Section 1440).*

8 1431. (a) On and after January 1, 2018, ~~no employer may~~  
9 ~~conduct any janitorial business without a valid registration under~~  
10 ~~this section, and all employees shall be registered with the~~  
11 ~~department pursuant to this section.~~ *the Labor Commissioner shall*  
12 *maintain an on-line registration system of employers integrated*  
13 *with the Labor Commissioner's system for managing investigations.*

14 (b) *On and after July 1, 2018, no employer may conduct any*  
15 *janitorial business without a current and valid registration under*  
16 *this chapter and all employers shall be registered with the Labor*  
17 *Commissioner pursuant to this chapter.*

18 ~~(b) To~~

19 (c) *On and after January 1, 2018, to qualify for a certificate of*  
20 *registration or for a renewal of a certificate of registration renewal*  
21 *under this section, chapter, an employer shall, in a manner*  
22 *prescribed by the director, Labor Commissioner, do all of the*  
23 *following:*

24 (1) ~~Beginning July 1, 2017, register~~ *Register online* with the  
25 ~~department~~ *Labor Commissioner* and pay an initial nonrefundable  
26 application fee of one thousand dollars (\$1,000) and an annual  
27 renewal fee of one thousand dollars (\$1,000) on or before July 1  
28 of each year thereafter. The director may adjust the initial  
29 registration and renewal fees no more than annually to support the  
30 costs specified in Section ~~1445~~. *1450.*

31 (2) Execute a written application, subscribed and sworn to by  
32 the employer under penalty of perjury under the laws of this state  
33 that contains all of the following:

34 (A) The name of the employer and, if applicable, its fictitious  
35 business name.

36 (B) The form of the employer and, if a corporation, all of the  
37 following:

38 (i) The date of incorporation.

39 (ii) The state in which incorporated.

1 (C) If a foreign corporation, the date the articles of incorporation  
2 were filed with the California Secretary of State.

3 (D) Whether the corporation is in good standing with the  
4 California Secretary of State.

5 (E) The federal employer identification number (FEIN) and the  
6 state employer identification number (SEIN) of the employer.

7 (F) The employer's business address, telephone number, fax  
8 number, and email address.

9 ~~(G) The name and title of the manager, officer, or shareholder~~  
10 ~~who will serve as the qualifying individual to meet the examination~~  
11 ~~requirements in paragraph (4).~~

12 ~~(H)~~  
13 (G) The names, residential addresses, business addresses,  
14 telephone numbers, email addresses and Social Security numbers,  
15 federal employer identification number (FEIN) or the state  
16 employer identification number (SEIN) of the following persons:

17 (i) All corporate officers, if the employer is a corporation.

18 (ii) All persons exercising management responsibility in the  
19 employer's office, regardless of the form of the business entity.

20 (iii) The franchisor, if the employer is a franchise.

21 (iv) All shareholders holding at least 10 percent of the  
22 outstanding voting shares of the employer, if the employer has  
23 shareholders, and the actual percent owned by each of those  
24 shareholders.

25 (v) All persons who have a financial interest of 10 percent or  
26 more in the employer's business, regardless of the form of business  
27 entity, and the actual percentage owned by each of those persons.

28 ~~(I)~~

29 (H) The total number of covered workers who are employees  
30 of the employer.

31 ~~(J)~~

32 (I) The total number of covered workers who are independent  
33 contractors of the employer.

34 (J) *The total number of covered workers who are franchisees*  
35 *of the employer.*

36 (K) The employer's total annual payroll-related expenses over  
37 the last 12 months.

38 (L) Whether the employer uses a professional employer  
39 organization or leasing employer.



1 (M) Whether the employer has instituted an alternative work  
2 week pursuant to Section 511.

3 (N) Name, ~~address~~ *address*, and telephone number of any  
4 recognized collective bargaining agent representing ~~the covered~~  
5 ~~workers~~ *any of the employer's covered workers, and whether that*  
6 *collective bargaining agent represents all of the employer's*  
7 *covered workers in California.*

8 (O) Whether the application is for a new or renewal registration  
9 and, if the application is for a renewal, the prior registration  
10 number.

11 (P) Whether the employer is also a covered successor employer,  
12 ~~and~~ *and*, if so, the information in subparagraphs (A) to (C),  
13 inclusive, (E), and (F) for the predecessor employer.

14 (Q) Certification that the information submitted to the ~~director~~  
15 *Labor Commissioner* under this ~~subparagraph~~ *paragraph* and  
16 paragraph (3) is complete.

17 (R) A written pledge under penalty of perjury under the laws  
18 ~~of this state~~ *the State of California* that the employer shall:

19 (i) Comply with all applicable federal, state, and local laws and  
20 regulations during the upcoming year, including, but not limited  
21 to, laws regarding health and safety, labor and employment, wage  
22 and hour, and licensing ~~and registration~~ laws that affect ~~workers~~.  
23 *covered workers, including, but not limited to, Sections 96.8, 98,*  
24 *98.6, and 98.7, Section, 238 to 238.5, inclusive, Sections 244,*  
25 *558.1, 1019, and 1024.6, Section 1060 to Section 1065, inclusive,*  
26 *and Sections 1102.5 and 2810 of this code, Section 690.020 to*  
27 *Section 690.050, inclusive, of the Code of Civil Procedure, and*  
28 *Section 494.6 of the Business and Profession Code; and timely*  
29 *notify the Labor Commissioner as required by subdivision (d).*

30 (ii) Timely notify the ~~director~~ *Labor Commissioner* as required  
31 ~~by paragraphs (1) and (2) of subdivision (e).~~ *subdivision (d).*

32 (S) Such other information as the ~~director~~ *Labor Commissioner*  
33 requires for the administration and enforcement of this chapter.

34 (T) A post office box and mail drop are not acceptable responses  
35 to subparagraphs (F), (G), and (I) above.

36 (3) ~~Provide evidence.~~ *Execute a written report that provides*  
37 *evidence or disclosures under penalty of perjury under the laws*  
38 ~~of this state, or releases the State of California,~~ as are necessary  
39 to establish all of the following:

1 (A) ~~Workers'—~~*The employer has workers' compensation*  
2 *coverage that complies with Division 4 (commencing with Section*  
3 *3200) and includes sufficient coverage for—any every covered*  
4 *worker. Coverage may be evidenced by a current and valid*  
5 *certificate of workers' compensation insurance or certification of*  
6 *self-insurance required under Section 7125 of the Business and*  
7 *Professions Code.*

8 (B) *The employer does not have any delinquent liability to a*  
9 *covered worker or the state for any assessment of—back wages or*  
10 *unpaid compensation or backpay, for having committed sexual*  
11 *harassment of a covered worker; or for having violated any*  
12 *provision of this part, or, in all cases, for related damages, interest,*  
13 *finest, or penalties pursuant to any final judgment, order, or*  
14 *determination by a court or any federal, state, or local*  
15 *administrative agency, including a confirmed arbitration—award.*  
16 *award or a settlement agreement. If the employer is a covered*  
17 *successor employer, then the employer shall establish that both*  
18 *the covered successor employer and the predecessor employer do*  
19 *not have such delinquent liability.* However, for purposes of this  
20 subparagraph, the employer shall not be disqualified for any  
21 judgment, order, or determination that is under appeal, provided  
22 ~~that appeal or for any settlement agreement that is being~~  
23 ~~adjudicated,~~ the employer has secured the payment of any amount  
24 eventually found due through a bond or other appropriate means.

25 (C) Any administrative merits determinations, arbitral awards  
26 or decisions, civil judgments, or criminal judgments rendered  
27 against the employer within the preceding ~~three-year~~ five-year  
28 period ~~for violating covered laws: assessments for unpaid~~  
29 ~~compensation or backpay, for having committed sexual harassment~~  
30 ~~of a covered worker; or for having violated any provision of this~~  
31 ~~part, or, in all cases, for related damages, interests, fines, and~~  
32 ~~penalties.~~ A covered successor employer shall provide this  
33 information both for itself and for its predecessor employer. At  
34 minimum, the employer shall provide:

- 35 (i) The law violated.  
36 (ii) The case number, inspection number, charge number, docket  
37 number, or other unique identification number.  
38 (iii) The date rendered.  
39 (iv) The name of the court, arbitrator, agency, board, or  
40 commission rendering the determination or decision.

1 (v) A copy of the administrative merits determination, arbitral  
2 award or decision, or civil or criminal judgment document.

3 (D) ~~A~~ *On and after July 1, 2018, the employer has a sexual*  
4 *violence and sexual harassment prevention plan that meets the*  
5 *requirements of subdivision (b) of Section 1425. 1426.*

6 (E) Within the last 12 months, the employer has screened all  
7 supervisors for convictions of any of the acts listed in subdivision  
8 (c) of Section 29 of the Penal Code, for being listed on the  
9 registered sex offender database under the Sex Offender  
10 Registration Act (Chapter 5.5 (commencing with Section 290) of  
11 Title 9 of Part 1 of the Penal Code), and for any civil judgments  
12 for having committed sexual harassment.

13 (F) *On and after July 1, 2018, the employer is in compliance*  
14 *with all the requirements of Section 1425.*

15 (F)

16 (G) Other information as the ~~director~~ *Labor Commissioner*  
17 *requires for the administration and enforcement of this chapter.*  
18 *chapter and of Chapter 4 (commencing with Section 1440).*

19 (4) ~~Designate a qualifying individual as described in~~  
20 ~~subparagraph (G) of paragraph (2), to take a written examination~~  
21 ~~that demonstrates an essential degree of knowledge of the current~~  
22 ~~state laws and regulations that apply to employers as the director~~  
23 ~~deems necessary for the safety and protection of employers,~~  
24 ~~covered workers, and the public, including the identification and~~  
25 ~~prevention of sexual harassment in the workplace. To successfully~~  
26 ~~complete the examination, the qualifying individual shall correctly~~  
27 ~~answer at least 85 percent of the questions. The examination may~~  
28 ~~only be taken a maximum of three times per calendar year. The~~  
29 ~~examination shall include a demonstration of the current laws and~~  
30 ~~regulations regarding wages, hours, and working conditions,~~  
31 ~~workplace discrimination and sexual harassment, collective~~  
32 ~~bargaining, workers' compensation, health and safety, the~~  
33 ~~Displaced Janitor Opportunity Act (Chapter 4.5 (commencing with~~  
34 ~~Section 1060) of Part 3), Section 2810, and penalties and~~  
35 ~~enforcement of those laws.~~

36 (e)

37 (d) After an employer is registered or has renewed its  
38 registration, the employer ~~shall:~~ *shall notify the Labor*  
39 *Commissioner in writing within 90 days of:*

~~(1) Notify the director within 30 calendar days of all administrative merits determinations, arbitral awards or decisions, and civil or criminal judgments rendered against the employer for violating any covered laws.~~

*(1) Any delinquent liability the employer owes to a covered worker or the state for any assessment of unpaid compensation or backpay, for having committed sexual harassment of a covered worker, or for having violated any provision of this part, or in all cases, for related damages, interest, fines, or penalties pursuant to any final judgment, order, determination by a court or any federal, state, or local administrative agency, including a confirmed arbitration award, or settlement agreement.*

~~(2) Provide the director within 30 calendar days Any updated responses to the written registration or renewal application or report if any change occurs that would change any response contained within the in the completed written application. application or report the employer submitted under paragraphs (2) and (3) of subdivision (c).~~

*(e) At least 30 days prior to the expiration of each employer's registration, the Labor Commissioner shall mail or email a renewal notice to the last known mailing or email address of the employer. However, the omission of the Labor Commissioner to provide the renewal notice in accordance with this subdivision shall not excuse an employer from making timely application for renewal of registration, shall not be a defense in any action or proceeding involving failure to renew registration, and shall not subject the Labor Commissioner to any legal liability.*

*(f) Fees received pursuant to this section shall be deposited in the State Janitorial Contractor Registration Fund established in Chapter 5 (commencing with Section 1450) and shall be used only for the purposes specified in that chapter.*

1432. ~~The~~ On and after July 1, 2018, the employer shall:

~~(a) After July 1, 2017, maintain~~ Maintain records of the sign-in sheets and materials consistent with paragraph ~~(4)~~ (2) of subdivision ~~(a)~~ (b) of Section 1425. These records shall be available for inspection by the department and shall be maintained in a manner that meets the requirements issued by the department under subdivision ~~(a)~~ of Section 1425. Labor Commissioner.

*(b) Post and display prominently in a conspicuous place where it may be read by covered workers during work hours, and in all*

1 places where notices to covered workers are posted both physically  
2 and electronically:

3 (1) By July 1, ~~2017~~, 2018, the notice in paragraph ~~(6)~~ (3) of  
4 subdivision ~~(a)~~ (b) of Section 1425.

5 (2) By ~~January~~ July 1, 2018, a copy of the employer's current  
6 certificate of registration.

7 1433. (a) ~~The director~~ *Labor Commissioner* shall not grant  
8 registration or renewal of ~~registration~~: *registration to any employer*  
9 *who*:

10 ~~(1) To any employer who has a record of serious, repeated,~~  
11 ~~willful, or pervasive violations of covered laws, including any~~  
12 ~~covered successor employer who either alone or in combination~~  
13 ~~with its predecessor employer has such a record, unless the~~  
14 ~~employer has remediated the violation by entering into and~~  
15 ~~fulfilling the terms of a labor compliance agreement as described~~  
16 ~~in Section 1436.~~

17 ~~(2) To any employer who has failed to provide the director~~  
18 ~~evidence of~~

19 ~~(1) Lacks~~ workers' compensation coverage that meets the  
20 requirements of subparagraph (A) of paragraph (3) of subdivision  
21 (b) of Section ~~1431~~ or who lacks that coverage. *1431*.

22 ~~(3) To any employer who has failed to provide the director~~  
23 ~~evidence that it does not have~~

24 ~~(2) Has~~ any delinquent liability to a worker or to the state as  
25 described in subparagraph ~~(B)~~ of paragraph ~~(3)~~ (1) of subdivision  
26 ~~(b)~~ (d) of Section ~~1431~~, or who has such liability. *1431*.

27 ~~(4) To any employer who has failed to provide the director~~  
28 ~~evidence of a sexual violence and sexual harassment prevention~~  
29 ~~plan that meets the requirements of subdivision (b) of Section~~  
30 ~~1425, or who lacks such a plan.~~

31 ~~(5) To any employer whose qualifying individual has not~~  
32 ~~achieved a passing score on the written examination in paragraph~~  
33 ~~(4) of subdivision (b) of Section 1431.~~

34 ~~(6) To any employer who has~~

35 ~~(3) Has~~ not submitted the complete fees, application,  
36 information, *disclosures under penalty of perjury*, and evidence  
37 as required by ~~subdivision (b)~~ subdivisions (b) to (d), inclusive, of  
38 Section 1431.

39 ~~(7) To any employer who~~

1     (4) ~~Who has willfully made false statements in its application.~~  
2     ~~application or report to qualify for a certificate of registration or~~  
3     ~~for a renewal of a certificate of registration under Section 1431.~~

4     (b) ~~The director may revoke, suspend, or place a registration~~  
5     ~~on probation if:~~ Labor Commissioner shall suspend a registration  
6     if it is found that:

7     (1) ~~An employer willfully made false statements in its application~~  
8     ~~or its report submitted for a certificate of registration or for a~~  
9     ~~renewal of a certificate of registration under Section 1431.~~

10    (2) ~~The employer failed to notify the Labor Commissioner in~~  
11    ~~writing within 90 days of any delinquent liability as required by~~  
12    ~~paragraph (1) of subdivision (d) of Section 1431. If the employer~~  
13    ~~failed to notify the Labor Commissioner within 90 days, the~~  
14    ~~employer's registration shall be automatically suspended on the~~  
15    ~~date that the Labor Commissioner is informed, or is made aware~~  
16    ~~of the delinquent liability. The suspension shall not be removed~~  
17    ~~until proof of satisfaction of the delinquent liability, or in lieu~~  
18    ~~thereof, a notarized copy of an accord is submitted to the Labor~~  
19    ~~Commissioner. If the employer notifies the Labor Commissioner~~  
20    ~~in writing within 90 days of the imposition of any delinquent~~  
21    ~~liability, the employer shall, as a condition to the continual~~  
22    ~~maintenance of the registration, have on file with the Labor~~  
23    ~~Commissioner a bond sufficient to guarantee payment for any~~  
24    ~~delinquent liability applicable under this paragraph.~~

25    (A) ~~By operation of law, failure to maintain the bond or failure~~  
26    ~~to abide by the accord shall result in the automatic suspension of~~  
27    ~~any registration to which this paragraph applies.~~

28    (B) ~~A registration that is suspended for failure to comply with~~  
29    ~~the provisions of this subdivision can only be reinstated when proof~~  
30    ~~of satisfaction of all debts is made, or when a notarized copy of~~  
31    ~~an accord has been filed as set forth in this subdivision.~~

32    (C) ~~The Labor Commissioner shall take the actions required~~  
33    ~~by this paragraph upon notification by any party having knowledge~~  
34    ~~of the outstanding judgment upon a showing of proof of the~~  
35    ~~judgment.~~

36    (3) ~~Lacks workers' compensation coverage that meets the~~  
37    ~~requirements of subparagraph (A) of paragraph (3) of subdivision~~  
38    ~~(c) of Section 1431.~~

39    (c) ~~The Labor Commissioner may suspend a registration if:~~

1 (1) The employer has violated or failed to comply with ~~any~~  
2 ~~provision of this chapter. the requirements of subdivision (b) of~~  
3 ~~Section 1425, Section 1426, or Section 1432.~~

4 (2) The employer has made any misrepresentations or false  
5 statements in his or her registration or registration renewal  
6 application, or in response to the ~~director's~~ *Labor Commissioner's*  
7 request for information.

8 (3) The employer has failed to respond to the ~~director's~~ *Labor*  
9 *Commissioner's* request for information within ~~10~~ 30 days of such  
10 a request.

11 (4) ~~The employer has failed to notify the director or to provide~~  
12 ~~the director with updated responses within 30 days as required by~~  
13 ~~paragraphs (1) or (2) of subdivision (c) of Section 1431.~~

14 (5) ~~The employer has not complied with its labor compliance~~  
15 ~~agreement.~~

16 (6) ~~The conditions under which the registration was issued have~~  
17 ~~changed or no longer exist.~~

18 (7) ~~The employer has not complied with the posting and~~  
19 ~~recordkeeping requirements of Section 1432.~~

20 (8) ~~An employer's registration has been revoked within three~~  
21 ~~years from the date of application.~~

22 (e) ~~When determining whether to suspend, revoke, or place a~~  
23 ~~registration on probation, the director shall take into consideration~~  
24 ~~as a mitigating factor whether the employer has entered into or~~  
25 ~~otherwise fulfilled the terms of a labor compliance agreement as~~  
26 ~~described in Section 1436.~~

27 (d) ~~An employer's registration is void when:~~

28 (1) ~~The employer ceases conducting any janitorial business.~~

29 (2) ~~The employer changes its form of legal entity.~~

30 (3) ~~The employer transfers its registration.~~

31 (4) ~~The director revokes an employer's registration.~~

32 (e) ~~At least 30 days prior to the expiration of each employer's~~  
33 ~~registration, the director shall mail or email a renewal notice to~~  
34 ~~the last known mailing or email address of the employer. However,~~  
35 ~~omission of the director to provide the renewal notice in accordance~~  
36 ~~with this subdivision shall not excuse an employer from making~~  
37 ~~timely application for renewal of registration, shall not be a defense~~  
38 ~~in any action or proceeding involving failure to renew registration,~~  
39 ~~and shall not subject the director to any legal liability.~~

1 ~~(f) Fees received pursuant to this section shall be deposited in~~  
2 ~~the fund established in Chapter 5 (commencing with Section 1445)~~  
3 ~~and shall be used only for the purposes specified in that chapter.~~

4 *(4) The employer has failed to notify or provide the Labor*  
5 *Commissioner with updated responses within 90 days as required*  
6 *by paragraph (2) of subdivision (d) of Section 1431.*

7 *(d) When determining whether to suspend or reissue a*  
8 *registration, and when determining the duration of a suspension,*  
9 *the Labor Commissioner shall take into consideration evidence*  
10 *and other information submitted by the employer; covered workers,*  
11 *the employer's collective bargaining representative, if any, and a*  
12 *labor-management cooperation committee established pursuant*  
13 *to the federal Labor Management Cooperation Act of 1978 (Section*  
14 *175a of Title 29 of the United States Code) whose members include*  
15 *a collective bargaining agent that represents covered workers.*  
16 *The determination by the Labor Commissioner shall be reviewable*  
17 *only for abuse of discretion.*

18 *(e) The Labor Commissioner may reissue a registration after*  
19 *suspension only under the following circumstances:*

20 *(1) To an individual upon application in a manner prescribed*  
21 *by the Labor Commissioner.*

22 *(2) To a partnership upon application in a manner prescribed*  
23 *by the Labor Commissioner if there is no change in the partners*  
24 *or in the partnership structure.*

25 *(3) To a corporation upon application in a manner prescribed*  
26 *by the Labor Commissioner if there is no change in the status of*  
27 *the corporation as registered with the Secretary of State.*

28 *(4) To a limited liability company upon application in a manner*  
29 *prescribed by the Labor Commissioner if there is no change in the*  
30 *status of the company as registered with the Secretary of State.*

31 *1434. (a) An employer's registration is void when:*

32 *(1) The employer ceases conducting any janitorial business.*

33 *(2) The employer changes its form of legal entity.*

34 *(3) The employer transfers its registration.*

35 *(4) The employer's registration has expired and no renewal has*  
36 *been issued.*

37 *(5) The employer fails to return the renewal application, fees,*  
38 *or report under subdivision (c) or Section 1431 that was rejected*  
39 *by the Labor Commissioner for insufficiency or incompleteness*  
40 *within 90 days from the date of original notice or rejection.*



1 (b) *The void date on an application may be extended up to 90*  
2 *days upon documented evidence by the employer that the failure*  
3 *to complete the application process was due to a medical*  
4 *emergency or other circumstance beyond the control of the*  
5 *employer.*

6 (c) *A registration voided pursuant to this section shall remain*  
7 *in the possession of the Labor Commissioner for the period as he*  
8 *or she deems necessary and shall not be returned to the employer.*  
9 *Any reapplication for a registration shall be accompanied by the*  
10 *fee fixed by this chapter.*

11 ~~1434.~~

12 1435. (a) On and after ~~February~~ July 1, 2018, on ~~the~~  
13 ~~department's~~ *its* Internet Web site, the ~~director~~ Labor  
14 Commissioner shall maintain a regularly updated, searchable *online*  
15 database of *all* registered employers. The database will have the  
16 capability to search all data, at minimum, for the past 10 ~~years,~~  
17 ~~and years.~~ *The database shall include all the following information:*

18 (1) The name, address, telephone number, and registration  
19 number of the employer.

20 (2) If the employer is a successor employer, the registration  
21 number of any predecessor employers.

22 (3) The business addresses, telephone numbers, and email  
23 addresses of the persons that the employer submitted under  
24 subparagraph ~~(H)~~ (G) of paragraph (2) of subdivision ~~(b)~~ (c) of  
25 Section 1431, and, if the employer's application listed anyone in  
26 clauses (iv) and (v), the percent financial interest owned by that  
27 person or shareholder.

28 (4) The current status and effective dates of the employer's  
29 registration.

30 (5) The identity of the employer's recognized collective  
31 bargaining agent, ~~if any.~~ *any, and whether that collective*  
32 *bargaining agent represents all of the employer's covered workers*  
33 *in California.*

34 (6) A listing of any past denials, ~~revocations, or suspensions~~  
35 ~~suspensions, or voidances~~ of the employer's registration, including  
36 the effective dates of those past denials, ~~revocations, or~~  
37 ~~suspensions, or voidances~~ as well as the basis for them

38 (7) A listing of any civil fines or stop orders issued against the  
39 employer under this part, including the dates of those fines or stop  
40 orders, and the basis for them.

1 ~~(8) A listing of all labor compliance agreements the employer~~  
2 ~~has executed, and their effective dates.~~

3 ~~(9) A copy of all labor compliance agreements the employer~~  
4 ~~has executed.~~

5 ~~(10)~~

6 ~~(8) Other information as deemed necessary by the director.~~  
7 ~~Labor Commissioner.~~

8 (b) On and after July 1, ~~2018~~, 2019, on the department's Internet  
9 Web site, the ~~director~~ Labor Commissioner shall maintain a  
10 searchable *online* database regarding its compliance and  
11 enforcement activities. The ~~department~~ Labor Commissioner shall  
12 update this information on or before July 1 of every year. The  
13 database shall have the capability to search all data, at minimum,  
14 for the past 10 years and shall include all the following information:

15 (1) The total number of employers with ~~current~~, *current and*  
16 valid registration that meets the requirements under ~~Section 1431.~~  
17 *Chapter 3 (commencing with Section 1430).*

18 (2) The total number of employers whose registration *or renewal*  
19 *of registration* was ~~revoked or suspended, or who have been placed~~  
20 ~~on probation~~ *denied, suspended, or voided*, within the last 12  
21 months, categorized by the basis of that ~~revocation~~, *denial*,  
22 suspension, or ~~probation~~. *voidance, and, if applicable, the duration*  
23 *of the suspension.*

24 ~~(3) The total number of employers who have entered into a labor~~  
25 ~~compliance agreement with the director within the last 12 months.~~

26 ~~(4)~~

27 (3) The total *monetary* amount of ~~finer~~ *fines*, *the total number*  
28 *of fines*, and the total number of employers that the ~~department~~  
29 Labor Commissioner has cited under ~~Section 1437~~ 1441 within  
30 the last 12 months, categorized by the basis of those fines.

31 ~~(5)~~

32 (4) The total number of employers who have been issued stop  
33 orders under ~~Section 1438~~ *this part* over the last 12 months,  
34 categorized by the basis of those stop orders.

35 ~~(6)~~

36 (5) The total number of audits initiated and completed by the  
37 ~~department~~ Labor Commissioner under ~~Section 1439~~, *this part*,  
38 within the last 12 months.

39 ~~(7)~~

(6) The total number of complaints investigated by the department *Labor Commissioner* under Section ~~1440~~, *1444*, within the last 12 months.

(8)

(7) Other information as deemed necessary by the ~~director~~.  
*Labor Commissioner*.

#### CHAPTER 4. ENFORCEMENT

~~1435.~~

~~1440.~~ The ~~director~~ *Labor Commissioner* shall establish a Property Services Compliance Unit to enforce this part, including, but not limited to: *to maintaining and enforcing the janitorial contractor registry, list, and Internet Web site, conducting audits, and investigating complaints.*

~~(a) Maintaining the janitorial contractor registry, list, and Internet Web site.~~

~~(b) Negotiating and enforcing labor compliance agreements.~~

~~(c) Conducting audits and investigating complaints.~~

~~1436.~~ Whenever an employer has a record of serious, willful, or pervasive violations of the laws or has violated one or more provisions of this part, the director may seek to negotiate and enter into a labor compliance agreement with the employer. The labor compliance agreement addresses appropriate remedial measures, compliance assistance, and any steps to resolve issues to increase compliance with covered laws, the requirements of this part, or other related matters. The employer shall comply with the terms of the labor compliance agreement. Covered workers affected by an employer's record of serious, willful, or pervasive violations of the laws or who have initiated a complaint against an employer for its violations of this part shall have an opportunity to participate in the development and monitoring of such labor compliance agreements. If the covered workers are represented by a collective bargaining agent, their collective bargaining agent shall have that opportunity as well. The director may seek to engage a labor-management cooperation committee established pursuant to the federal Labor Management Cooperation Act of 1978 (Section 175a of Title 29 of the United States Code) whose members include a collective bargaining agent that represents covered workers in

1 the development and monitoring of any labor compliance  
2 agreement.

3 1437. (a) An employer that meets any of the following  
4 requirements is subject to the following civil fines, either  
5 individually or in combination with one another:

6 (1) An employer that pursuant to this part, fails to register or to  
7 renew its registration is subject to a civil fine of not more than two  
8 hundred dollars (\$200) for each calendar day, or portion thereof,  
9 that the employer conducts any janitorial business without  
10 registering or renewing its registration.

11 (2) An employer that fails to submit correct information to the  
12 department or that fails to provide information requested by the  
13 department within 10 days of such a request, is subject to a civil  
14 fine of not more than two hundred dollars (\$200) for each calendar  
15 day, or portion thereof, that the employer conducts any janitorial  
16 business without submitting the correct information to the  
17 department or providing the information requested by the  
18 department.

19 (3) An employer that fails to comply with its labor compliance  
20 agreement, is subject to a civil fine of not more than two hundred  
21 dollars (\$200) for each calendar day, or portion thereof, that the  
22 employer conducts any janitorial business without complying with  
23 its labor compliance agreement.

24 (4) An employer that fails to notify the director within 30  
25 calendar days as required in paragraph (1) of subdivision (c) of  
26 Section 1431, is subject to a civil fine of not more than two hundred  
27 dollars (\$200) for each calendar day, or portion thereof, that the  
28 employer conducts any janitorial business without notifying the  
29 director.

30 (5) An employer that fails to provide the director with updated  
31 responses within 30 calendar days as required in paragraph (2) of  
32 subdivision (c) of Section 1431, is subject to a civil fine of not  
33 more than two hundred dollars (\$200) for each calendar day, or  
34 portion thereof, that the employer conducts any janitorial business  
35 without notifying the director.

36 (b) The amount of the civil fine or fines in subdivision (a) shall  
37 be determined by the director based on consideration of the  
38 following:

1 ~~(1) Whether the failure of the employer was a good faith~~  
2 ~~mistake, and, if so, whether the error was promptly and voluntarily~~  
3 ~~corrected when brought to the attention of the employer.~~

4 ~~(2) Whether the employer has a prior record of failing to comply~~  
5 ~~with the requirements in this chapter.~~

6 ~~(3) Whether the employer has entered into and has currently~~  
7 ~~fulfilled the terms of a labor compliance agreement under Section~~  
8 ~~1436.~~

9 ~~(4) For each individual violation, the fine may not be less than:~~

10 ~~(A) One hundred dollars (\$100) for each calendar day, or portion~~  
11 ~~thereof, unless the failure of the employer was a good faith mistake,~~  
12 ~~and, if so, the error was promptly and voluntarily corrected when~~  
13 ~~brought to the attention of the employer.~~

14 ~~(B) One hundred fifty dollars (\$150) for each calendar day, or~~  
15 ~~portion thereof, if the employer has been assessed fines or a stop~~  
16 ~~order within the previous three years for failing to meet the~~  
17 ~~requirements of this part, unless those fines were subsequently~~  
18 ~~withdrawn or overturned.~~

19 ~~(C) Two hundred dollars (\$200) for each calendar day, or portion~~  
20 ~~thereof, if the department determines that the violation was willful.~~

21 ~~(e) An employer who violates the posting and recordkeeping~~  
22 ~~requirements of Section 1432 shall be subject to civil fines of up~~  
23 ~~to seven thousand dollars (\$7,000) per violation.~~

24 ~~(d) The determination by the director as to the amount of the~~  
25 ~~fines shall be reviewable only for abuse of discretion.~~

26 ~~(e) These civil fines may be assessed under a citation issued by~~  
27 ~~the Labor Commissioner and the procedures for issuing, contesting,~~  
28 ~~and enforcing judgments shall be the same as those set forth in~~  
29 ~~Section 1197.1.~~

30 *1441. (a) On and after July 1, 2018, an employer who fails to*  
31 *register or to renew its registration or that has a void or suspended*  
32 *registration under this part is subject to a civil fine of two hundred*  
33 *dollars (\$200) for each calendar day, or portion thereof, that the*  
34 *employer conducts any janitorial business without registering or*  
35 *renewing its registration or with a void or suspended registration.*

36 *(b) An employer who violates any of the other requirements of*  
37 *this chapter or of Chapter 3 (commencing with Section 1430) is*  
38 *subject to a civil fine of not more than two hundred dollars (\$200)*  
39 *for each calendar day, or portion thereof, that the employer is in*  
40 *violation of either chapter, with the exception of the posting and*

1 *recordkeeping requirements of Section 1432, in which case the*  
2 *employer shall be subject to civil fines of up to seven thousand*  
3 *dollars (\$7,000) per violation.*

4 *(c) The determination by the Labor Commissioner as to the*  
5 *amount of the fines shall be reviewable only for abuse of discretion.*

6 *(d) These civil fines may be assessed under a citation issued by*  
7 *the Labor Commissioner and the procedures for issuing, contesting,*  
8 *and enforcing judgments shall be the same as those set forth in*  
9 *Section 1197.1.*

10 ~~1438.~~

11 ~~1442.~~ *If On and after July 1, 2018, if an employer is conducting*  
12 *business without a valid registration under ~~Section 1431~~, this part,*  
13 *the Labor Commissioner may issue and serve on that employer a*  
14 *stop order prohibiting the use of labor by that employer until the*  
15 *employer acquires a *current and* valid registration, provided that*  
16 *the stop order would not compromise or imperil public safety or*  
17 *the life, health, and care of vulnerable individuals. The stop order*  
18 *shall also prohibit the employer from continuing to provide services*  
19 *by conducting *any janitorial* business using the labor of another*  
20 *business, contractor, or subcontractor. The stop order shall become*  
21 *effective immediately upon the service of the order. Any worker*  
22 *affected by the work stoppage shall be paid by the employer for*  
23 *such time lost, not exceeding 10 days, pending compliance by the*  
24 *employer. The employer may protest the stop order by making*  
25 *and filing with the Labor Commissioner a written request for a*  
26 *hearing within 20 days after service of the stop order. The hearing*  
27 *shall be held within five days from the date of filing the request.*  
28 *The Labor Commissioner shall notify the employer of the time*  
29 *and place of the hearing by mail. At the conclusion of the hearing,*  
30 *the stop order shall be immediately affirmed or dismissed, and*  
31 *within 24 hours thereafter, the Labor Commissioner shall issue*  
32 *and serve on all parties to the hearing by registered or certified*  
33 *mail a written notice of findings, accompanied by written findings.*  
34 *A writ of mandate may be taken from the findings to the*  
35 *appropriate superior court. The writ shall be taken within 45 days*  
36 *after the mailing of the notice of findings accompanied by written*  
37 *findings. The Labor Commissioner may file an action in superior*  
38 *court for injunctive and other appropriate relief to enforce the stop*  
39 *order and shall be entitled to recovery of costs and attorney's fees*  
40 *if any relief is obtained by the Labor Commissioner.*

1     ~~1439. (a) On its Internet Web site, the department shall~~  
2 ~~maintain and update annually a list of known janitorial employers~~  
3 ~~in California. The list shall be based on information provided to~~  
4 ~~the department pursuant to Section 1431, and on any other sources~~  
5 ~~of information available.~~

6     ~~(b)~~

7     ~~1443. (a) In a manner prescribed by the director, the~~  
8 ~~department shall~~ *Labor Commissioner, the Labor Commissioner*  
9 *may select registered and unregistered employers as audit subjects*  
10 *for the purpose of determining compliance with this part. The*  
11 *department shall select each employer from the list of known*  
12 *janitorial employers at least once every five years. Audit subjects*  
13 *may be selected in any order, and routine audits may be scheduled*  
14 *in a manner to best minimize travel expenses and use audit*  
15 *personnel efficiently.*

16     ~~(c)~~

17     ~~(b) The department~~ *Labor Commissioner* ~~may select audit~~  
18 ~~subjects using random and nonrandom selection methods. At least~~  
19 ~~half of the audit subjects shall be selected at random from the~~  
20 ~~department's listing of known janitorial employers. The final~~  
21 ~~selection of audit subjects shall be within the discretion of the~~  
22 ~~department.~~ *Labor Commissioner.*

23     ~~(d)~~

24     ~~(c) The department~~ *Labor Commissioner* ~~may investigate~~  
25 ~~information or complaints in addition to conducting an audit.~~

26     ~~1440.~~

27     ~~1444. The department~~ *Labor Commissioner* ~~shall conduct a~~  
28 ~~reasonable and timely investigation upon receiving a complaint~~  
29 ~~regarding a potential violation of the requirements of this part from~~  
30 ~~a covered worker, a collective bargaining agent that represents~~  
31 ~~covered workers, or a labor management cooperation committee~~  
32 ~~established pursuant to the federal Labor Management Cooperation~~  
33 ~~Act of 1978 (Section 175a of Title 29 of the United States Code)~~  
34 ~~whose members include a collective bargaining agent that~~  
35 ~~represents covered workers. The department shall make a written~~  
36 ~~determination regarding the disposition of each complaint within~~  
37 ~~30 days, which can be extended by good cause by the director.~~

38     ~~1441.~~

39     ~~1445. (a) Any employer that conducts any janitorial business~~  
40 ~~after its registration has been suspended, revoked, or denied~~

1 reissuance is guilty of an offense punishable by a fine of not less  
2 than ten thousand dollars (\$10,000), or by imprisonment for not  
3 less than six months and no more than one year, or both.

4 (b) Any employer, owner, director, officer, or managing agent  
5 of the employer who fails to observe a stop order issued and served  
6 upon him or her pursuant to Section 1438 is guilty of a  
7 misdemeanor punishable by imprisonment in county jail not  
8 exceeding 60 days or by a fine not exceeding ten thousand dollars  
9 (\$10,000), or both. For the purposes of this section, the term  
10 “managing agent” has the same meaning as in subdivision (b) of  
11 Section 3294 of the Civil Code.

12 ~~1442. After January 1, 2018, any person or entity that hires an~~  
13 ~~employer that does not have a current, valid registration under~~  
14 ~~Section 1431 on the date the person or entity enters into or renews~~  
15 ~~a contract or subcontract for janitorial services with the employer,~~  
16 ~~shall share with that employer all civil legal responsibility and~~  
17 ~~civil liability for all violations of Article 1 (commencing with~~  
18 ~~Section 12940) of Chapter 6 of Part 2.8 of Division 3 of Title 2 of~~  
19 ~~the Government Code.~~

20 ~~1443. (a) A person or entity shall not discharge an individual~~  
21 ~~or in any manner discriminate, retaliate, or take an adverse action~~  
22 ~~against any individual because the individual engaged in any~~  
23 ~~conduct delineated in this part.~~

24 ~~(b) Any individual who is discharged, threatened with discharge,~~  
25 ~~demoted, suspended, retaliated against, subject to an adverse action,~~  
26 ~~or in any other manner discriminated against in the terms or~~  
27 ~~conditions of his or her work because the individual engaged in~~  
28 ~~any conduct delineated in this part, shall be entitled to reinstatement~~  
29 ~~and reimbursement for lost wages and work benefits.~~

30 ~~(c) Any person or entity who willfully refuses to hire, promote,~~  
31 ~~or otherwise restore an individual, including a current or former~~  
32 ~~worker, who has been determined to be eligible for rehiring or~~  
33 ~~promotion by a grievance procedure, arbitration, or hearing~~  
34 ~~authorized by law, is guilty of a misdemeanor.~~

35 ~~(d) Any applicant for work who is refused work, or who in any~~  
36 ~~other manner is discriminated against in the terms and conditions~~  
37 ~~of any offer of work because the applicant engaged in any conduct~~  
38 ~~delineated in this part, shall be entitled to work and reimbursement~~  
39 ~~for lost wages and work benefits.~~



(e) ~~Any worker aggrieved by any violation of this section may bring a civil action for injunctive relief or damages, or both, against a registered or nonregistered employer who violates this section, and, upon prevailing, shall recover reasonable attorney's fees and costs, including expert witness fees.~~

(f) ~~In addition to other remedies available, a person or entity who violates this section is liable for a civil penalty not exceeding ten thousand dollars (\$10,000) per individual for each violation of this section, to be awarded to the individual or individuals who suffered this violation.~~

# CHAPTER 5. STATE JANITORIAL CONTRACTOR REGISTRATION FUND

~~1445.~~

1450. (a) The State Janitorial Contractor Registration Fund is hereby created as a special fund in the State Treasury to be available upon appropriation of the Legislature for the purposes established in subdivision (b). All registration fees collected pursuant to Section 1431, all civil fines collected pursuant to Section 1437, and any other moneys as are designated by statute or order shall be deposited in the fund.

(b) Moneys in the fund shall be used only for the following purposes:

(1) The reasonable costs of administering the registration of janitorial contractors pursuant to ~~Section 1431. Chapter 3 (commencing with Section 1430) and Chapter 4 (commencing with Section 1440) by the Labor Commissioner.~~

(2) The costs and obligations associated with the administration and enforcement of this part by the ~~department. Labor Commissioner.~~

(c) The annual employer registration renewal fee specified in *paragraph (1) of subdivision (b) (c) of Section 1431*, and any adjusted application renewal fee, shall be set in amounts that are sufficient to support the annual appropriation approved by the Legislature for the fund and not result in a year-end fund balance greater than 25 percent of the appropriation. Any year-end balance in the fund greater than 25 percent of the appropriation shall be applied as a credit when determining any fee adjustments for the subsequent fiscal year.

(d) To provide adequate cash flow for the purposes specified in subdivision (b), the Director of Finance, with the concurrence of the Secretary of the Labor and Workforce Development Agency, may approve a short-term loan each fiscal year from the Labor and Workforce Development Fund to the State Janitorial Contractor Registration Fund.

(1) The maximum amount of the annual loan allowable may be up to, but shall not exceed, 50 percent of the appropriation authority of the fund in the same year in which the loan was made.

(2) For the purposes of this section, a “short-term loan” is a transfer that is made subject to both of the following conditions:

(A) Any amount loaned is to be repaid in full during the same fiscal year in which the loan was made, except that repayment may be delayed until a date not more than 30 days after the date of enactment of the annual Budget Act for the subsequent fiscal year.

(B) Loans shall be repaid whenever the funds are needed to meet cash expenditure needs in the loaning fund or account.

#### ~~CHAPTER 6. STANDARDS AND PROCEDURES~~

~~1447. Before July 1, 2017, the director shall develop all the following standards and procedures:~~

~~(a) For the determination whether administrative merits determinations, arbitral awards or decisions, or civil or criminal judgments of covered laws are for serious, repeated, willful, or pervasive violations. Those standards shall:~~

~~(1) Where available, incorporate existing statutory standards for assessing whether a violation is serious, repeated, or willful.~~

~~(2) Where no statutory standards exist, develop standards that take into account the following for determining whether a violation is:~~

~~(A) “Serious”—the number of workers affected, the degree of risk posed or actual harm done by the violation to the health, safety, or well-being of a worker, the amount of damages incurred or fines or penalties assessed with regard to the violation, and other considerations as the director finds appropriate.~~

~~(B) “Repeated”—whether the entity has had one or more additional violations of the same or a substantially similar requirement in the past five years.~~

1     ~~(C) “Willful”— whether the entity knew of, showed reckless~~  
2     ~~disregard for, or acted with plain indifference to whether its conduct~~  
3     ~~was prohibited by covered laws.~~

4     ~~(D) “Pervasive”— the number of violations of a requirement~~  
5     ~~or the aggregate number of violations of requirements in relation~~  
6     ~~to the size of the entity.~~

7     ~~(b) For a covered worker, a collective bargaining agent~~  
8     ~~representing covered workers, or a labor management cooperation~~  
9     ~~committee established pursuant to the federal Labor Management~~  
10    ~~Cooperation Act of 1978 (29 U.S.C. Sec. 175a), the membership~~  
11    ~~of which includes a collective bargaining agent that represents~~  
12    ~~covered workers, to file a complaint regarding an employer’s~~  
13    ~~failure to comply with the requirements of this part, and for the~~  
14    ~~department to investigate and issue a written determination~~  
15    ~~regarding each complaint within 30 days, which period may be~~  
16    ~~extended for good cause.~~

17    ~~(e) For the suspension, revocation, or placement into~~  
18    ~~probationary status of an employer’s registration.~~

19    ~~(d) For the department to negotiate and for the director to enter~~  
20    ~~into labor compliance agreements with employers as described in~~  
21    ~~Section 1436.~~

22    ~~(e) For the director to conduct random and nonrandom audits~~  
23    ~~or investigations, or both audits and investigations.~~

24    ~~SEC. 2.~~

25    ~~SEC. 4.~~ No reimbursement is required by this act pursuant to  
26    ~~Section 6 of Article XIII B of the California Constitution because~~  
27    ~~the only costs that may be incurred by a local agency or school~~  
28    ~~district will be incurred because this act creates a new crime or~~  
29    ~~infraction, eliminates a crime or infraction, or changes the penalty~~  
30    ~~for a crime or infraction, within the meaning of Section 17556 of~~  
31    ~~the Government Code, or changes the definition of a crime within~~  
32    ~~the meaning of Section 6 of Article XIII B of the California~~  
33    ~~Constitution.~~